

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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<http://www.montgomerycountymd.gov/content/council/boa/board.asp>

Case No. A-6102

PETITION OF DAVID AND KIMBERLY BUGDEN
(Hearing held October 12, 2005)

OPINION OF THE BOARD
(Effective date of Opinion, November 10, 2005)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for a variance from Section 59-C-9.45. The petitioners propose the construction of an accessory structure/detached garage that requires a variance to be located in the side yard. Section 59-C-9.45 requires accessory structures to be located in the rear yard only.

Clarence M. Wright of C. M. Wright Construction, Inc. appeared with the petitioners at the public hearing.

The subject property is Lot 13, Block A, Wesley Estates Subdivision, located at 1001 Parris Ridge Drive, Spencerville, Maryland, 20866, in the RC Zone (Tax Account No. 01839777).

Decision of the Board: Requested variance **denied**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioners propose the construction of a 24 x 24 foot detached garage in the property's eastern side yard.
2. The petitioner testified that the property has an existing 100-year-old forest and a stream located at its rear yard boundary. The petitioner testified that the property has a septic system that is located at the rear of the house and that locating the garage elsewhere on the property would interfere with the septic system and jeopardize the reserve area that may be required in the future if the system should fail.
3. The petitioner testified that a detached garage could be located elsewhere on the property, but that the structure would require a long breezeway to make it functional with the house. The petitioner testified that the property has an existing two-car garage and that the proposed

garage would provide needed additional parking on the site. The petitioner testified that property is 6.3 acres, with dense vegetation and trees and that locating a structure elsewhere would be costly and require the removal of the mature vegetation and trees.

FINDINGS OF THE BOARD

Based upon the petitioners' binding testimony and the evidence of record, the Board finds that the variance must be denied. The requested variance does not comply with the applicable standards and requirements set forth in Section 59-G-3.1(a) as follows:

(a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.

The Board finds that while the property's existing septic system and the mature vegetation and trees are characteristics of the subject property, any "uniqueness" or "peculiarity" caused by the existing septic system and the mature vegetation and trees does not constitute "conditions peculiar to a specific parcel of property" of such a severity that the Board may grant the requested variance.

The Board notes that the property exceeds the minimum lot size for the zone and that new construction could be located elsewhere on the lot without the need for a variance. See, Exhibit Nos. 4(a) and 4(b) [site plans] and 8(a) [zoning vicinity map].

The petition does not meet the requirements of Section 59-G-1.3(a) and the Board did not consider the other requirements in that section for the grant of a variance. Accordingly, the requested variance to permit the construction of an accessory structure/detached garage in the side yard is denied.

The Board adopted the following Resolution:

Board member Wendell M. Holloway was necessarily absent and did not participate in this Resolution. On a motion by Louise L. Mayer, seconded by Donna L. Barron, with Wendell M. Holloway and Allison Ishihara Fultz, Chair, in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above is adopted as the Resolution required by law as its decision on the above entitled petition.

Allison Ishihara Fultz
Chair, Montgomery County Board of Appeals

I do hereby certify that the foregoing
Opinion was officially entered in the
Opinion Book of the County Board of
Appeals this 10th day of November, 2005.

Katherine Freeman
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.